

GUIDELINES ON PRE-MERGERS, CONSOLIDATIONS AND ACQUISITIONS NOTIFICATION

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CHAPTER I BACKGROUND

The operation of mergers, consolidations, and/or acquisitions (“mergers”), recognized or not, will affect the condition of competition among business persons in the relevant market as well as bring impact to consumers and society. The Commission recognizes that mergers may result in the promotion or lessening of competition. Therefore, under Article 28 and 29 of the Law Number 5 of 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition (“Law No. 5 of 1999”), the Commission will undertake control over mergers, in particular those which can result in lessening of competition in the relevant market and may harm the society.

In order to provide clarity to business persons, the Commission establishes a clear procedure on the reviewing phases undertaken by it over a notification of a proposed merger, among other things, the description of aspects which will be evaluated in determining whether a merger may result in monopolistic practices or unfair business competition.

This guidance will clarify types of mergers shall be notified to the Commission, procedure for notification, and other aspects that will be appraised by the Commission in determining its opinion.

This guidance is an inseparable part of the Commission Regulation No. 1 of 2009 on the Pre-Mergers, Consolidations and/or Acquisitions Notification (“Commission Regulation on Pre-Mergers Notification”).

CHAPTER II PURPOSES AND SCOPE

2.1 Objectives

The objectives of the adoption of this Commission Regulation and its related Guidance are as follows:

1. To ensure that mergers will always promote efficiency in the economy, by which national welfare can be improved.
2. To provide legal certainty for business persons which plan to undertake merger.
3. To prevent monopolistic practices and/or unfair business competition as a result of mergers.
4. To promote mergers intended to improve the effectiveness and efficiency of business activities.

2.2 Legal Basis

The legal basis of the Commission Regulation and this Guidance is Article 28 and 29 of the Law No. 5 of 1999.

Article 28 (1) and (2) state that:

1. Business persons are prohibited from conducting mergers or consolidations which may result in monopolistic practices and/or unfair business competition;
2. Business persons are prohibited from acquiring shares of other business persons which may result in monopolistic practices and/or unfair business competition.

Article 29 (1) states that:

- (1) Mergers or consolidations or share acquisitions as referred to in Article 28 which result in asset values and/or sales turnover exceeds certain amount/level shall be notified to the Commission, not later than 30 (thirty) days after the date of mergers, consolidations or acquisitions.

On the basis of the aforementioned, the Commission may impose administrative sanctions in accordance with Article 47 (2)(e), in the form of:

- e. An annulment decision of the mergers or consolidations and acquisitions as referred to in Article 28.

In accordance with Article 47 (2) (e) above, the Commission has power to annul mergers which may result in monopolistic practices and/or unfair business competition. However, in order to provide more certainty, the Commission gives an opportunity for business persons to notify their merger plan to the Commission prior to its consummation. The Commission will then assess the impact of the merger and will opine on such plan.

In the case that it finds that a merger will not lessen competition, the Commission will then be bound and will not use its power to annul such merger in the future. For that reason, business persons will be avoided from any uncertainty whether or not a merger which has taken place will be annulled by the Commission due to a consideration that is has caused monopolistic practices and/or unfair business competition.

2.3 Terminology Usage

There are many terminologies which are used to describe an event essentially similar or the same. The Law No. 40 of 2007 on Limited Liability Company uses the terms *penggabungan* (merger), *peleburan* (consolidation), and *pengambilalihan* (acquisition). Meanwhile, the Government Regulation on Banking uses the terms *merger* (merger), *konsolidasi* (consolidation), and *akuisisi* (acquisition). Some other

countries use the term “concentration” and “takeover”. Although the Law No. 5 of 1999 uses the term merger, consolidation and share acquisition, for the purpose of this Guidance, the Commission uses the term “merger” to also refer to consolidation, acquisition and merger, except as expressly referred in the guidance as a particular event.

Although the Law No. 5 of 1999 uses the term share acquisition, the Commission, however, considers that the term of “share acquisition” shall be broadly interpreted to also include the acquisition of assets and division/business unit, so that the term of takeover or share acquisition in this guidance also refers to the acquisition of assets and division/business unit.

2.4 What is merger?

Even though the Law No. 40 of 2007 defines what merger, consolidation and acquisition refers to, the Commission however believes that the term “merger” used in the Law No. 5 of 1999 covers a broader interpretation than that as laid down in the Law No. 40 of 2007, which only applies to Limited Liability Companies. For that reason, the Commission considers it is necessary to provide a description of the merger as referred to in the Law No. 5 of 1999.

In general, merger in this regulation refers to action by business persons which results in:

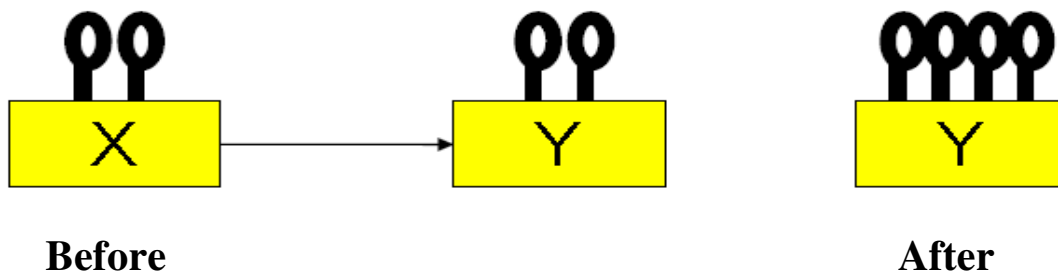
- 1) The creation of concentrations of control of business persons which are previously independent to a business person or a group of business persons, or
- 2) Transfer of control from one business person to another business person, each of which is previously independent, resulting in the creation of concentration of control or of the market.

A merger can take the form of a merger, consolidation or acquisition as set forth in the Law No. 40 of 2007 or of a merger, consolidation and acquisition as provided in the regulations on banking or of other forms, such as merger between firms (for example, public accounting firms).

2.5 General Forms of Merger

In general, a merger takes place when two or more business persons, previously independent, combine themselves into one (single) entity, either because one business person merge to the other, or a number of business persons consolidate into a new entity, or transfer of control of one business person to another business person. As an illustration, merger can be described as follows:

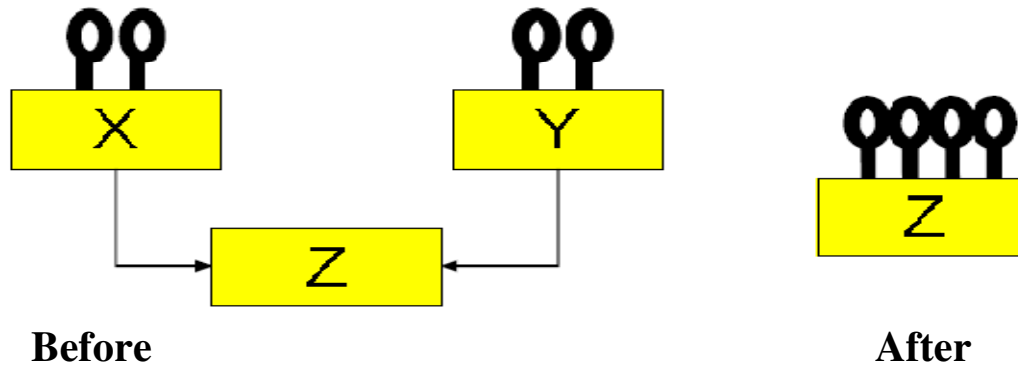
Form I/Merger



Explanation of Form I/Merger

In this type of merger, X merges itself into Y, so by-law, X has dissolved while all of the assets and liabilities of X are by-law transferred to Y. This also applies to the ownership of shares, whereas all of shares of X are by-law transferred to the shareholders of Y.

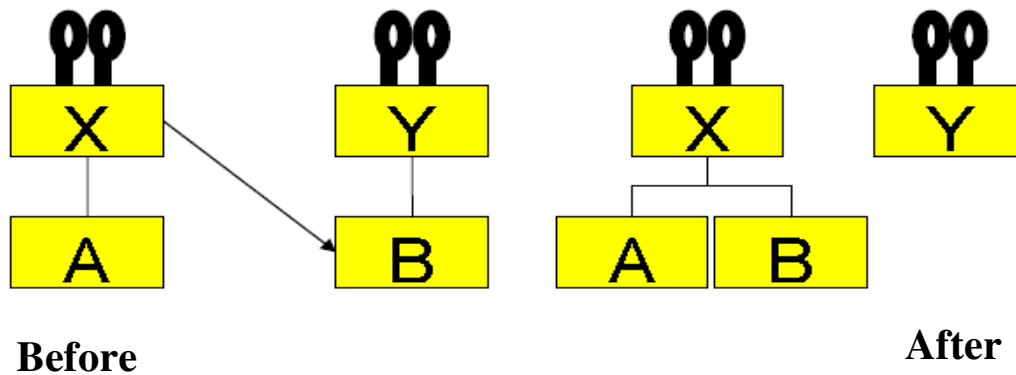
Form II/Consolidation



Explanation of Form II/ Consolidation

In this category of merger, both X and Y are by-law dissolved, while all assets and liabilities of X and Y are by-law entirely transferred to Z, the new entity. Each shareholders of X and Y by-law then becomes the shareholders of Z.

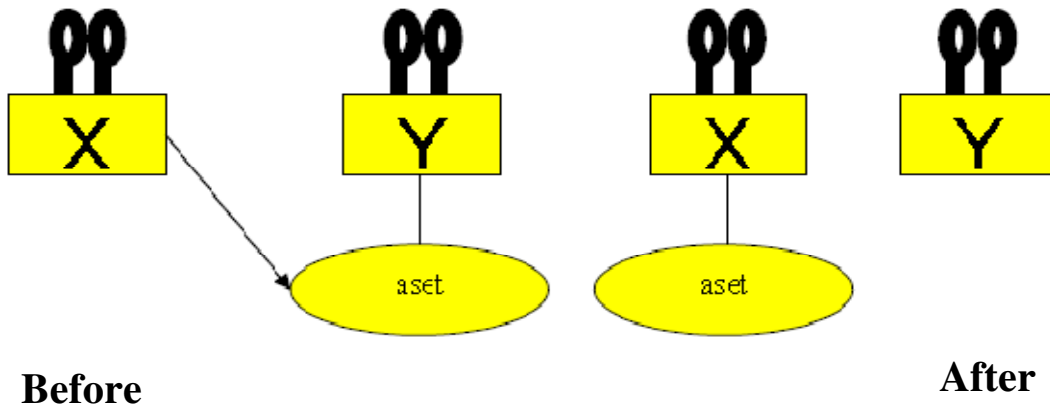
Form III/Acquisition of Shares



Explanation of Form III/Acquisition of Shares

In this kind of merger, X acquires control over B so that X becomes the shareholder and controller of B. This does not involve transfer of assets and liabilities from B to X, and vice versa.

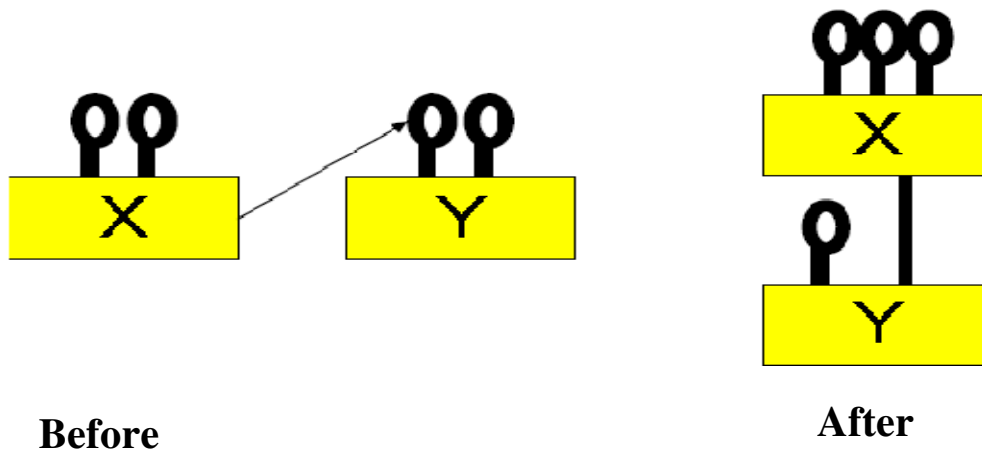
Form IV/Acquisition of Asset



Explanation of Form IV/Acquisition of Asset

In this form of merger, there is no acquisition of shares but assets. Assets previously owned by Y are purchased by X so that there is an acquisition of control over the assets.

Form V/Takeover

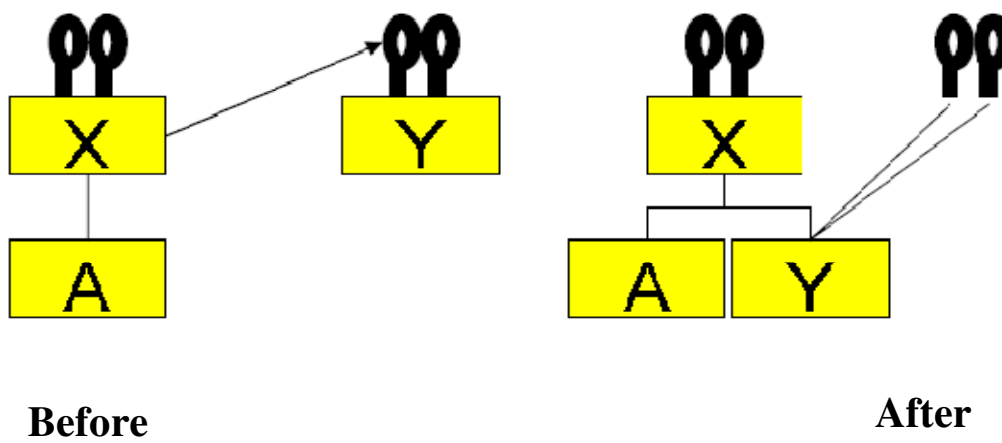


Explanation of Form V/Takeover

In this form of merger, X purchases most (significant amount) of the shares in Y directly from the shareholders, so that Y becomes a subsidiary of X. There is a transfer of control from the shareholders of Y to X. Nevertheless, legal status (entity) of company X and Y is still valid (exist) without any transfer of assets and liabilities from X to Y, and vice versa.

Form VI/Public Takeover

Capital Market



Explanation of form VI/Public Takeover

This type of merger is similar to that of form V/takeover, the difference is that the shares takeover is made through capital market. Y becomes a subsidiary of X and therefore X has control over Y.

The Commission does not limit the possibilities that there may be other type(s) or forms of merger other than those six types of merger as described above. So long as the essence of merger is satisfied/met, then the Commission may exercise its power to evaluate or review the merger in order to prevent the possible anticompetitive effects which may take place.

CHAPTER III PROCEDURE FOR NOTIFICATION

3.1 Pre-Notification

There are two forms of merger notification to the Commission, namely pre-notification and post-notification. Nonetheless, this guidance will only deal with pre-notification, while post-notification will be further regulated under a Government Regulation on Article 29 of the Law No. 5 of 1999.

Pre-notification is a notice voluntarily submitted by business persons to the Commission regarding their merger plan. The Commission encourages business persons to undertake pre-notification in order to minimize the risk of loss suffered by business entities if the merger is considered or found to lead to monopolistic practices or unfair business competition and therefore be annulled by the Commission following its completion.

To avoid reassessment, the Commission is committed to evaluate a merger only once, as long as there is no material (significant) change in the data submitted by the notifying parties before and after the implementation of merger. Due to that reason, if business actors have voluntarily carried out pre-notification, the Commission will not change its assessment result in the post-notification. However, to meet the provisions laid down in Article 29 of the Law No. 5 of 1999, business persons that have notified its plan prior its implementation (pre-notification) are still obliged to undertake post-notification pursuant to government regulation stipulating the merger notification which will be adopted by the Government.

3.2 Notifiable Mergers

Not all merger plans should be notified to the Commission. The Commission determines several criteria of mergers which should be notified, as follows:

- a. value of total assets of the business person resulted from merger or consolidation exceeds IDR 2.500.000.000,00 (two trillion five hundred billion rupiahs); or
- b. value of total sales (turnover) of the business person resulted from merger or consolidation exceeds IDR 5.000.000.000.000,00 (five trillion rupiahs); or
- c. resulting in the control of market share of more than 50% (fifty percent) of the relevant market.

Meanwhile for the financial service industry (bank and non-bank) applied the following provisions:

- d. value of total assets of the business person resulted from merger or consolidation exceeds IDR 10.000.000.000.000,00 (ten trillion rupiahs); or
- e. value of total sales (turnover) of the business person resulted from merger or consolidation exceeds IDR 15.000.000.000.000,00 (fifteen trillion rupiahs); or
- f. resulting in the control of market share of more than 50% (fifty percent) of the relevant market.

Merging Parties

For the purpose of pre-notification, party that undertakes merger is defined as one business person or one group of business persons, depending on the interdependency of the related business person. The Commission considers that some business persons that by-law separated to be as one group of business persons as long as the business persons are controlled by the same party or by a single highest business person. Being controlled refers to the acquisition of at least 25% of shares with voting. Thus, the

calculation of value of asset and value of sales of the business actor group consists of the whole value of asset and value of sales of the highest business person along with its controlled entire business persons.

Value of Sales as a Result of Merger or Consolidation

Value of sales as a result of merger or consolidation is the audited sales value calculated based on the summation of the latest year sales value of the merging parties. In case that there is a significant difference between sales value of the last year and that of the previous year (the difference is more than 30%), then the sales value shall be calculated based on the average sales value for the last 3 years.

Value of Asset as the Result of Merger or Consolidation

Value of asset as the result of merger or consolidation is the audited asset value calculated based on the summation of the latest year asset value of the merging parties. In case that there is a significant difference between the assets value of the last year and that of the previous year (the difference is more than 30%), then the provision in calculating sales value as mentioned above applies *mutatis mutandis*.

Market Share

As laid down in the Law No. 5 of 1999, market share refers to the percentage of the value of sales or purchases of certain goods or services controlled by particular business person in the relevant market for a certain calendar year. Market share is determined by the combined market share of the merging parties for the last year. In case that there is significant difference between market share of the last year and that of the previous year (there is difference of more than 10%), then the provision in calculating sales value above applies, *mutatis mutandis*.

Relevant Market

In accordance with the Law No. 5 of 1999, relevant market is defined as market related to a certain marketing scope or area by business persons for goods and/or services of the same or similar types or substitutes for such goods and or services. More details on definition of relevant market can be found in the Guidelines on relevant market adopted by the Commission.

3.3 Notifiable Shares Acquisition

Shares acquisition which causes transfer of control of a business person from the former shareholders of the acquired to the new shareholders, the acquiring business person, and that results in combination of total sales value, or total assets value, or market share of the two business persons or two business groups that falls within thresholds may be notified to the Commission.

The Commission considers that an acquisition of control occurs when the acquisition of shares involves at least 25% (twenty five percent) of the total voting shares issued by the acquired business person and therefore such acquisition may be notified to the Commission.

In case that the shares acquisition involve less than 25% (twenty five percent) of total voting shares, but it, in fact (de facto), confers control to the acquiring business person, then the Commission shall considers that the acquisition of control has occurred and therefore the transaction has met the criteria/requirements of the shares acquisition.

Shares acquisition as explained above, which results in the combined asset value and sales value or market share in the relevant market meet the criteria as described in section 3.2 on Notifiable Mergers, may be notified to the Commission.

Shares acquisition which has the objective of merely as an investment purposes is exempted from notification obligation. Such purpose is verified by the absence of transfer of control to the acquiring company or business person. In general, this type of shares acquisition occurs in stocks exchange (capital market) intended solely to create financial gain.

3.4 Notifiable Assets Acquisition

Change in control of a company does not only occur through share acquisition, but also through assets acquisition. Assets can be defined as all kind of business person's resources, either tangible or intangible. Assets acquisition is deemed to results in change of control of a company when the acquired assets are assets used by the acquired business person in one of its main business operation or the acquired business person's main asset or its important asset for doing the business activity, and as the consequence giving factual control to anyone who is in power of such asset. In the event that such asset acquisition results in combined sales value or assets value or market share as described in section 3.2 on Notifiable Mergers, then this assets acquisition can be notified to the Commission.

3.5 Other Acquisition Resulting in Transfer of Control

The Commission realises that transfer of control of company can take place without any shares or asset acquisition, e.g. through the controlling/management right acquisition. Therefore, acquisition other than shares and asset acquisition which factually results in the transfer of control of a business person, can be notified to the Commission as long as it satisfies the sales value or asset value or market shares threshold as laid down in section 3.2 on Notifiable Mergers.

3.6 Transaction Value Threshold

The Commission does not give any threshold of value of transaction which makes a transaction can be notified to the Commission. As long as the provisions which are laid down in section 3.2 on Notifiable Mergers are satisfied then the merger plan can be notified to the Commission without taking into account the value of merger transaction itself. This is intended to protect micro, small and middle business persons from acquiring by big business persons that will diminish the existence of micro, small, and middle business actors. By not limiting the merger transaction value, the Commission can review mergers between big business persons and micro, small, and middle business persons.

3.7 When to Undertake Pre-Notification?

The Commission encourages business persons to notify its plan in the earliest possible time to it prior to reporting their merger plan to the Supervisory Body of Capital Market (BAPEPAM), the Investment Board (BKPM), the Central Bank (Bank Indonesia), the Ministry of Law and Human Rights or other competent authorities, provided that there is a contract, agreement, memorandum of understanding, letter of intent, or any other written documents showing a merger plan between the business persons. However, the Commission considers a notification carried out too early for plan that may change substantially can cause the output of notification useless. Therefore, the Commission encourages business persons to notify a merger as early as possible by putting attention on the certainty of the transaction.

3.8 Who Should Undertake Pre-Notification?

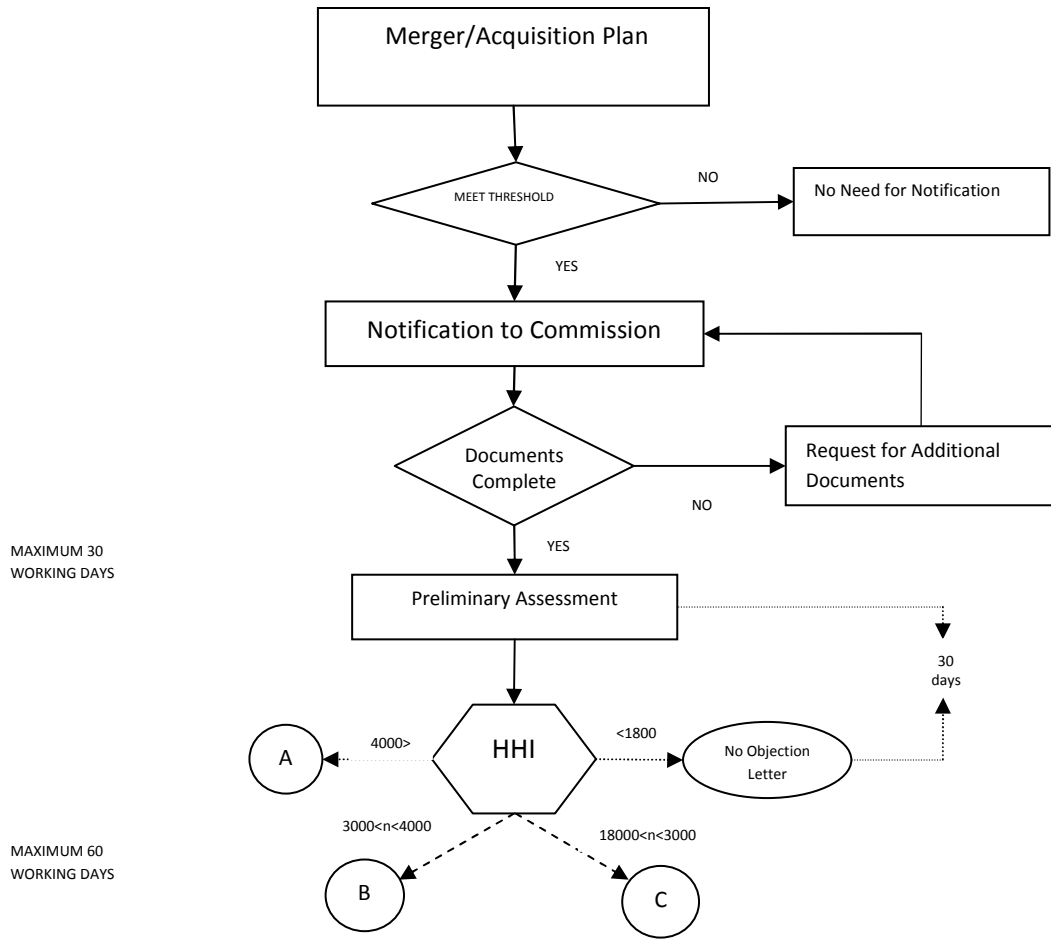
For business entities having a merger or consolidation plan, each business entity shall jointly notify their plan to the Commission. The Commission will commence its assessment if all parties involved in the merger or consolidation has submitted all required documents. However, the Commission asserts that company's data considered to be business secret shall not be disclosed to the party that in the same time undertakes notification. The objective of this code of conduct is to hinder the misuse of business secrets by parties that in the same time undertakes notification or to prevent the data from being used to facilitate collusion in case the merger plan is cancelled.

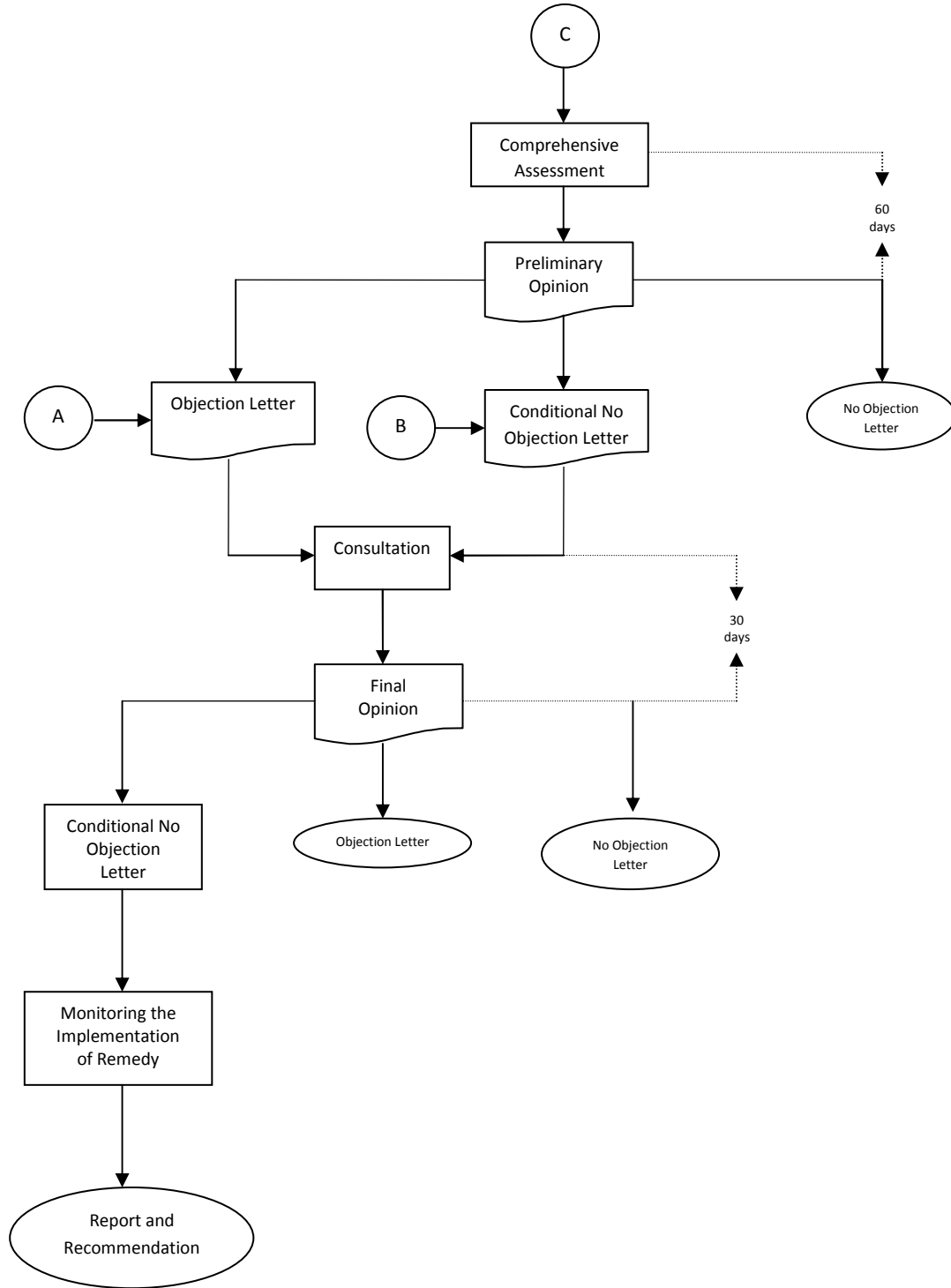
In case of acquisition, the acquiring party can notify their plan to the Commission. The acquired party, on the other hand, is not required.

CHAPTER IV MERGER REVIEW

4.1 Procedure for Review by the Commission

Procedure for review of a merger by the Commission can be described in the following scheme:





Explanation to the above scheme:

1. Business person with a merger plan which meets thresholds as laid down by the Commission may notify the plan to the Commission.
2. Business person fills out notification form and submits the documents required.
3. The Commission has a right to ask for additional documents from the notifying parties if needed.
4. After all documents are complete and meet the administrative requirements, the Commission shall state that all documents are complete and begin to conduct preliminary assessment upon the merger plan.
5. Not later than 30 (thirty) days, the Commission will issue its preliminary review with regard to the notification. On the basis of change in degree of market concentration (based on the change in Hirschman-Herfindahl Index (HHI) level), the Commission identifies whether there is a concern of monopolistic practices and or unfair business competition resulting from the merger.
6. Based on the level of post-merger HHI, there are four kinds of follow up of the pre-notification:
 - i. HHI below 1800, the Commission shall issue a No Objection Letter,
 - ii. HHI between 1800 until 3000, the Commission shall conduct a comprehensive assessment,
 - iii. HHI between 3000 until 4000, the Commission shall issue a Conditional No Objection Letter,
 - iv. HHI above 4000, the Commission shall issue an Objection Letter.
7. In case it conducts a comprehensive assessment over the merger, the Commission will gather data and information from third parties, such as competitors, consumers, government officials/institutions, and other relevant parties.
8. Not later than 60 (sixty) days, the Commission will undertake a comprehensive assessment and subsequently adopts its Preliminary Opinion.
9. In case the preliminary view or the Preliminary Opinion is in the form of Objection Letter or Conditional No Objection Letter, business persons may consult the Commission with regard its competition concerns over the merger plan and the conditions set forth by it.
10. Not later than 30 (thirty) days after the commencement of the consultation phase, the Commission will adopt its Final Opinion. The opinion will be conveyed to the merging parties and made public through at least the Commission's website.
11. In case the Commission issues a Conditional No Objection Letter in its Final Opinion, it will carry out a monitoring over the implementation of the remedies, in a time period conditional on the time needed to implement the remedies. Following the monitoring process, a report and recommendation will be made to the Commission.

4.2 Substantive Test

Article 28 of the Law No. 5 Year 1999 stipulates that a merger is prohibited if it results in monopolistic practices and/or unfair business competition. In determining whether there is an anti-competitive effect, the Commission will assess the followings:

Relevant Market

In accordance with Article 1(10) of the Law No. 5 of 1999, relevant market constitutes market pertaining to a certain marketing scope or area by business entities for goods and/or services of the same or similar types or substitutes for such goods and or services.

Market which relates to the range of or certain area of marketing, in competition law, is known as the geographical market. While (market which relates to) similar or identical goods or services or the

substitute of goods or services is known as the product market. Therefore, the analysis of relevant market shall be done through the analysis of product and geographical markets.

Product market analysis, essentially, aims to determine goods and/or services which are regarded as substitutable or interchangeable by consumers. To do this, a product must be reviewed under certain aspects, namely: purpose (intended use), characteristic and price. While, geographical market analysis aims to describe in which area the defined products (market) compete each other.

In general, this analysis is based on past experience and knowledge of the Commission, existing regulations, available secondary data, information from business associations, business persons, consumers and/or consumer proxy.

To amplify its confidence in the accuracy of the output of the relevant market analysis, the Commission may conduct market surveys. Surveys may focus on the consumers or their proxy as well as on the producers which are likely to be in the relevant market. The purpose of this survey is to gather the information on consumers and producers behaviour in the market when there are changes in price so that the Commission can predict the substitutability of goods and/or services concerned.

Further details on the methodology used to define relevant market can be found in the Guidelines on Relevant Market adopted by the Commission.

Market Concentration

Market concentration is an initial indicator appraised by the Commission to determine whether or not a comprehensive merger review is required. A significant difference in market concentration because of merger will be of interest for the Commission in its assessment.

Generally, there are two methods used to assess market concentration, firstly, by calculating CR_n and secondly, by calculating HHI. For merger review purposes, the Commission will employ HHI. However, when the calculation of HHI is not possible, the Commission then will use CR_n to analyse market concentration. The Commission will measure the concentration level before and after a merger and the increase in it.

In general, the Commission divides post-merger concentration level into four spectrums based on the post-merger HHI value, as follows: spectrum I with a post-merger HHI below 1800, spectrum II with a post-merger HHI between 1800 until 3000, spectrum III with post-merger HHI between 3000-4000, and spectrum IV with post-merger HHI above 4000.

Within spectrum I, the Commission regards no concerns of possible monopolistic and/or unfair business practices resulting from the merger plan. Due to the average HHI of markets in Indonesia which is still above 2000, then mergers which result in HHI below 1800 will not lead to changes in existing market structures and therefore the Commission regards there will not be post-monopolistic and unfair business competition concerns.

Within spectrum II, the Commission will conduct comprehensive review in relation with entry barriers aspects, possible unilateral or collusive anti-competitive effects, claimed efficiency and also possibility of exit from market of the merging parties if mergers do not take place (failing firms).

Within spectrum III, the Commission regards that the resulted market concentration has been high enough therefore it will sets remedies which need to be implemented by the merging parties in order to prevent

the emergence of market structure that may lead to monopolistic and unfair business competition following merger.

Within spectrum IV, the Commission regards that the resulted market concentration has been very high and therefore the Commission will issue an objection letter to mergers that result in HHI above 4000.

Barriers to Entry

An analysis of the existence of entry barriers is important to predict the behaviours of the merged entity following the merger. Without any entry barrier, the merged entity, even with high market share, will find it difficult to engage in anti-competitive practices, as it will, from time to time, face competitive pressures from new entrant in the marketplace.

On the other hand, if there are entry barriers in the market, the merged entity with even moderate market share may abuse its market power to impede competition or exploit consumers.

The Commission believes that entry barriers can be emerged from various instruments, such as regulation, a very intensive capital requirements, the need of an intensive technology, intellectual property protection, and high sunk costs.

In a situation of high barrier to entry, anti-competitive practices may be conducted unilaterally (unilateral conduct) or jointly with its competitors (collusive conduct).

Possible Consumer Loss Caused by Unilateral Conducts

Mergers which results in a relative dominant business person compared to its competitors will create a situation where the merged business person may abuse its dominant position in order to maximize the profits of the business person at the cost of consumers.

Unilateral conducts can be targeted to either other smaller business persons or directly to consumers. Those conducts can cause an impediment to competition indicating in the forms of high price, less product quantities, or poorer after-sales services.

In reviewing a proposed merger, therefore, the Commission will analyze the possibilities that the merged entity will engage in unilateral anti-competitive conducts.

Possible Consumer Loss Caused by Collusive Conducts

In the event that a merger does not result in the creation of a dominant business person in the market, as post-merger, there are a number of significant competitors; it is then difficult for the merged entity to engage in anti-competitive conducts, as there will be effective competitive pressure from competitors.

However, the reduction of the number of business persons in the market as the result of the merger will likely facilitate anti-competitive conducts engaged jointly with competitors, as can be denoted from high price, less product quantities, or poorer after-sales services.

In reviewing a proposed merger, therefore, the Commission will analyze, in projection, the possibilities that, post merger, the merged entity engages in collusive anti-competitive conducts.

Efficiencies

In the event that merger plan is aimed to increase efficiency, then the Commission will evaluate (1) how much the expected efficiency, is and (2) how can consumers benefit from the efficiency.

The Commission will undertake an in-depth investigation over the claimed efficiency proposed by the merging parties. After doing that, it will compare the claimed efficiency with the anti-competitive effects. In the event that the anti competitive effects will likely exceed the expected efficiency, the Commission will then choose to promote fair competition rather than to encourage the creation of efficiency by business entities because in the Commission's perspective, competitive market structure will directly or indirectly lead to the creation of efficient business persons in the market.

Possibility of Exit from Market/Industry

The Commission will also consider the reason proposed by the merging parties that the objective of merger is to prevent one of the business entities from closing down its operation in the market/industry. In the event that it is believed that the loss to society or public is greater when the failing business person leaves the market/industry than if it still remains and operates in the market/industry, the Commission then will unlikely find that the merger will likely result in lessening of competition, in the form of the creation of monopolistic practices or unfair business competition.

Vertical Mergers

Vertical mergers are mergers that occur within certain chain of production, such as between a manufacturer and its supplier for raw material, or between a wholesaler and its retailer, and so on. In general, vertical mergers do not lead to an anti-competitive effect that is as substantial as effect resulted from horizontal merger, as the latter directly changes the market structure while the former does not directly alter it.

In reviewing a vertical merger plan, the Commission will focus on the maintenance of access of downstream business entities to the supply of inputs or access of upstream business entities to consumers. By maintaining these accesses, then post-merger, a competitive situation can still be sustained.

The Commission will consider vertical mergers are likely to result in lessening of competition in the upstream or downstream markets, and therefore can cause harm to consumers, if following mergers, access to input supply or consumers will likely be restricted, or if not restricted, there is possibility that discrimination will occur and the substitute products are hard to find in the market concerned.

4.3 Pre-Merger Notification Output

As can be seen in the review procedure, there are two phases of review employed by the Commission, which are the preliminary and comprehensive assessment. Either in the preliminary or comprehensive assessment phase, there are three possible outputs as follows:

- 1) No Objection Letter, which means no objection from the Commission to the merger plan, so that it can be carried out.
- 2) Objection Letter, which means that the Commission objects to the merger plan, so that even the merger plan can be proceeded by the merging firms, it will open formal investigation upon the completion of the merger transaction, on the risk of annulment. Objection letter could also be

adopted by the Commission in case the business actors carrying out notification are not cooperative by not giving data needed for conducting analysis.

- 3) Conditional No Objection Letter, which means that there is no objection from the Commission to the merger plan if the merging parties fulfil remedies set by it. If the merger proceeds without satisfying the remedies, then it will undertake formal investigation upon the completion of such merger transaction on the risk of annulment.

4.4 Consultation on the Pre-Merger Notification Output

As the output of pre-notification is in the form of opinion which only binds the Commission but not the merging parties, then there is no legal action available against the Commission's opinion. However, business person may consult the Commission in the event that it issues an Objection Letter or Conditional No Objection Letter. The consultation aims to give opportunity to the notifying parties to convey their analysis on the impact of the proposed mergers to the Commission. In addition, the consultation also aims to bring an understanding between merging parties and the Commission of a solution that could balance the merging parties' interest with the Commission's concerns over the competition in the market following the transaction, especially in relation with the remedies set by the Commission. In order to bring certainty to the Commission and merging parties, consultation phase shall be within 30 (thirty) working days.

After the consultation, the Commission will adopt a final opinion on the proposed merger. This final opinion will be notified to the merging parties and made public through, at least, the Commission's website on the pre-determined date and time.

Though its opinion is not binding bylaw, the Commission encourages business entities to comply so as to prevent possible investigation over the merger. The Commission will open formal investigation over a completed merger, if prior to the completion, the Commission adopts an Objection Letter or the merging parties fail to comply with the remedies set by the Commission in its Final Opinion with a Conditional No Objection Letter qualification. The Commission will exercise its power as provided for in Article 47(2) (e) of the Law No. 5 of 1999 to annul the merger following its completion if it is considered as capable of causing monopoly practices and/or unfair business competition.

4.5 Post Merger Announcement

According to Article 29 of the Law No. 5 of 1999, business persons is obliged to submit a report over a complete merger transaction within 30 (thirty) days after the closing. In case the merging parties have filed a pre-notification, the Commission will not undertake a review over the post-notification.

4.6 Power of the Commission to Initiate a Case (Formal Investigation)

The Commission has power to initiate a case (formal investigation) on alleged violation of the Law No. 5 of 1999 in relation with merger even without any pre-notification from the business entities.

CHAPTER V FOREIGN MERGERS AND SPECIFIC INDUSTRIES

5.1 Foreign Mergers

Under the Law No. 5 of 1999, the Commission has power to control mergers that affect the competition condition in the domestic market in Indonesia. Foreign mergers taking place outside Indonesian are not the concern of the Commission, as long as they do not affect the domestic competition. However, the Commission has the authority and will exercise its power over a merger if the merger affects domestic market, taking into consideration the effectiveness of its exercise of the power conferred upon it.

Foreign mergers are deemed to affect the domestic market if one of the provisions set out in Part 3.2 Notifiable Mergers is fulfilled. Therefore, foreign mergers may be notified to the Commission before the mergers are completed.

A foreign merger is defined as follows:

1. Merger between two foreign businesses, which both or one of them has operation in Indonesia.
2. Merger between a foreign business person which has operation in Indonesia and an Indonesian business person.
3. Merger between a foreign business entity which does not have operation in Indonesia and an Indonesian business person.
4. Other form of mergers involving foreign factor.

The definition of operation is to engage directly in business activity, such as through representative office or to have domicile in Indonesia or to engage in business activity through subsidiary, either directly or indirectly.

The Commission considers that the above four types of mergers having met the thresholds will have a direct effect on the domestic market, so that the Commission will undertake review and use its power to control these kinds of mergers.

For other types of foreign mergers, the Commission will undertake review on a case by case basis and determine whether the related merger has impact on the competition in domestic market and whether the Commission's power can be effectively exercised.

5.2 Merger of Specific Industry

Unless determined otherwise, there is no industry that is specifically excluded from this regulation. Therefore, mergers involving banking, telecommunication, broadcasting, public and foreign investment companies, and others are therefore subject to the provisions set out in this regulation.

CHAPTER VI CLOSING

This guidance is an elucidation of the Commission Regulation No. 1 Year 2009 on the Pre-Merger, Consolidation, and Acquisition Notification. Whenever required, the Commission may amend this guidance at any time after taking into account the developing or changing condition where this guidance is implemented. Therefore, the Commission encourages business persons to constantly look over the Commission's website to find any changes made upon this guidance.